



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2010

Ms. Susan Denmon Banowsky  
Vinson & Elkins  
Attorney For Texas Windstorm Insurance Association  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746-7568

OR2010-05530

Dear Ms. Banowsky:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 377032.

The Texas Windstorm Insurance Association (the "association"), which you represent, received a request for four categories of information pertaining to the association, an independent adjuster, and a specified time interval. You state you do not maintain information responsive to a portion of the request.<sup>1</sup> You also state you will release some of the requested information to the requestor. You state the association is withholding portions of the submitted information subject to section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Our office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You assert portions of Exhibit 2 are excepted from public disclosure under section 552.101 in conjunction with the Gramm-Leach-Bliley Act (the "GLB Act"). See 15 U.S.C. § 6801 *et seq.* The Federal Financial Modernization Act, also known as the GLB Act, became law in November 1999. The purpose of the GLB Act is to promote competition in the financial services industry. See H.R. Conf. Rep. No. 106-434, at 245 (1999), *reprinted in* 1999 U.S.C.C.A.N. 245, 245. Reflecting Congressional concern regarding the dissemination of consumers' personal financial information, the GLB Act provides certain privacy protections "to protect the security and confidentiality of [consumers'] nonpublic personal information." 15 U.S.C. § 6801(a). The statute defines nonpublic personal information ("NPI") as "personally identifiable financial information ["PIFI"] - (i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution." *Id.* § 6809(4)(A). Federal regulations define PIFI as

any information: (i) [a] consumer provides to [a regulated financial institution] to obtain a financial product or service . . . ; (ii) [a]bout a consumer resulting from any transaction involving a financial product or service between [a regulated financial institution] and a consumer; or (iii) [a regulated financial institution] otherwise obtain[s] about a consumer in connection with providing a financial product or service to that consumer.

16 C.F.R. § 313.3(o)(1). Sections 6802(a) and (b) of title 15 of the United States Code provide in pertinent part as follows:

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

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<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

15 U.S.C. § 6802(a), (b). "Nonaffiliated third party" is defined as "any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution." *Id.* § 6809(5). Additionally, section 22.14 of title 28 of the Texas Administrative Code provides as follows:

(a) Conditions for disclosure. Except as otherwise authorized in this subchapter, a covered entity may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(1) the covered entity has provided to the consumer an initial notice as required under § 22.8 of this title (relating to Initial Privacy Notice);

(2) the covered entity has provided to the consumer an opt out notice as required in § 22.11 of this title (relating to Form of Opt Out Notice to Consumers and Opt Out Methods);

(3) the covered entity has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) the consumer does not opt out.

28 T.A.C. § 22.14(a). Section 6809(3)(A) of title 15 of the United States Code defines financial institution as “any institution the business of which is engaging in financial activities as described in section 1843(k) of Title 12.” 15 U.S.C. § 6809(3)(A). Section 1843(k)(4)(b) of title 12 defines the following activity as financial in nature: “Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.” 12 U.S.C. § 1843(k)(4)(B).

You explain the association is a pool of all property and casualty insurance companies authorized to write coverage in Texas, and its purpose is to provide Texas citizens in certain areas access to adequate wind and hail coverage when it is not available in the insurance marketplace, and to pay insureds’ claims when losses occur. We agree the association is a financial institution for purposes of the GLB Act. We understand the association is regulated by the Texas Department of Insurance. We also understand the requestor is a non-affiliated third party. *See* 15 U.S.C. § 6809(5). You seek to withhold the information you have marked in the submitted invoices under the GLB Act and chapter 22 of title 28 of the Texas Administrative Code. The information you have marked consists of a claim amount, claim number, and claimants’ names and contact information. You state the above categories of information were provided to the association for the purpose of obtaining insurance, and are also information resulting from transactions with insureds or services performed for insureds by the association, a regulated financial institution. *See* 15 U.S.C. § 6809(4)(A), 16 C.F.R. § 313.3(o)(1). You do not indicate the association provided opt out notices to the insureds. Because the names and contact information were provided to the association by the insureds in order to obtain a service, this information falls under the definition of PIFI. *See generally, Individual Reference Services Group, Inc. v. Fed. Trade Comm’n*, 145 F. Supp.2d 6, 26-31 (D.D.C. 2001) (discussing language, structure, and history of GLB Act to determine whether certain information meets definition of PIFI). Based on your representations and our review, we determine the association is prohibited by section 6802(a) and (b) of title 15 of the United States Code and section 22.14(a) of title 28 of the Texas Administrative Code from releasing the claimants’ names and contact information. Accordingly, the information we have marked in Exhibit 2 must be withheld from disclosure under section 552.101 in conjunction with the GLB Act. Because the claim number and claim amount do not personally identify any of the consumers here, this information does not constitute PIFI. Therefore, the claim number and claim amount may not be withheld under section 552.101 in conjunction with the GLB Act. As you raise no further exceptions to disclosure of this information, it must be released to the requestor.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d

668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the association must withhold the information we have marked in Exhibit 1 under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate that the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern; therefore, the remaining information is not confidential under common-law privacy, and the association may not withhold it on that ground.

We note the remaining information in Exhibit 1 contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>4</sup> Gov’t Code § 552.137(a)-(c). The e-mail address we have marked in Exhibit 1 is not specifically excluded by section 552.137(c). Therefore, unless the owner consents to release of his e-mail address, the association must withhold the e-mail address we have marked in Exhibit 1 under section 552.137.<sup>5</sup>

In summary, the association must withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction with the GLB Act. The association must withhold the information we have marked in Exhibit 1 under section 552.101 in conjunction with common-law privacy. The association must withhold the e-mail address we have marked in Exhibit 1 under section 552.137, unless the owner consents to its release. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 377032

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)